

REMARKS/ARGUMENTS

I. Status of the Claims

In the Office Action dated January 25, 2006, Claims 1-11 were noted as pending in the application. Claims 1-11 were rejected. As a result of this response, Claims 1-11 remain pending. Claims 1, 5 and 9 are currently amended in order to further clarify the claimed invention.

II. § 103 Rejections

1. Rejections of Claims 1-8

The Office Action rejected Claims 1-8 under 35 U.S.C. 103(a) as being unpatentable over *Bi et al.* (hereinafter “*Bi*”), in view of *Ordish et al.* (hereinafter “*Ordish*”). MPEP 706.02(j) and 2143 provide three criteria which must be met to establish a *prima facie* case of obviousness: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; (2) there must be a reasonable expectation of success; and (3) the prior art reference (or references when combined) must teach or suggest all the claim limitations. The examiner can satisfy this burden only by showing some objective teaching in the prior art or knowledge generally available to one of ordinary skill in the art suggests the claimed subject matter. Both the references and the claimed invention must be considered as a whole rather than piecemeal. *In re Antonie*, 559 F.2d 618, 620 (CCPA 1977); *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

Even assuming the Examiner has established a *prima facie* case of obviousness, the Examiner must further consider any evidence supporting patentability of the claimed invention. *In re Oetiker*, 977 F.2d 1443 (Fed. Cir. 1992). The determination of whether an invention is or is not obvious is a legal conclusion based on underlying factual inquiries including: (1) the scope and content of the prior art; (2) the level of ordinary skill in the prior art; (3) the level of ordinary skill in the art; and (4) objective evidence of nonobviousness. *In re Dembiczaik*, 175 F.2d 994,

998 (Fed. Cir. 1999) (*citing Graham v. John Deere, Inc.*, 383 U.S. 1, 17-18, 86 S.Ct. 684, 15 L.Ed.2d 545, 148 USPQ 459, 465 (1966)).

As will be discussed below, Applicant respectfully submits that Examiner has not met the burden of establishing the *prima facie* case of obviousness under 103(a). Applicant further respectfully submits that even if Examiner had met the burden of establishing the *prima facie* case of obviousness, Examiner has not met the burden of establishing the factors outlined in *John Deere*.

Claims 1 and 5 are currently amended to clarify the claimed invention, and are presented below for the Examiner's convenience.

1. (currently amended) In a beef cattle marketplace comprising a buyer interface, a producer interface, and a cattle information server, each of which is communicatively connected to a network, a method for marketing cattle comprising:

receiving information defining a plurality of demand profiles at the cattle information server from the buyer interface, wherein at least one of the demand profiles specifies a first pre-conditioning program for a group of cattle, **a pre-conditioning program comprising any of numerous protocols or criteria that govern the breeding, feeding, management, and health of cattle prior to slaughter;**

receiving information defining a supply profile for a group of cattle at the cattle information server from the producer interface, wherein the supply profile specifies a second pre-conditioning program for the group of cattle;

comparing the supply profile to the plurality of demand profiles to determine whether a match exists between the supply profile and one of the demand profiles, based at least in part on a comparison of the first and second pre-conditioning programs; **and**

providing an indication to one of the buyer interface and the producer interface of at least one matching demand profile in response to a match.

5. (currently amended) A system for dynamically marketing cattle comprising:
a buyer interface;
a producer interface;
a network; and
a[[n]] cattle information server wherein the cattle information server is communicatively connected to the buyer interface and the producer interface through the network;

wherein the cattle information server: receives information from the buyer interface defining a plurality of demand profiles, wherein at least one of the demand profiles contains information specifying a first pre-conditioning program, the first pre-conditioning program comprising any of numerous protocols or criteria that govern the breeding, feeding, management, and health of cattle prior to slaughter; receives information from the producer interface defining a supply profile, wherein the supply profile specifies a second pre-conditioning program, the second pre-conditioning program comprising any of numerous protocols or criteria that govern the breeding, feeding, management, and health of cattle prior to slaughter; stores the demand profiles and supply profile in a database; and searches the database to determine if one or more of the demand profiles match the supply profile based at least in part on a comparison of the first and second pre-conditioning programs; and identifies to one of the buyer interface and producer interface at least one demand profile in response to a match between the supply profile and the demand profile.

Applicant respectfully asserts that the specification fully supports the amendments to Claims 3 and 12, in paragraph [0031].

Applicant respectfully submits that *Bi* in view of *Ordish*, does not teach all of the claim limitations of Claims 1. Specifically, *Bi* in view of *Ordish*, does not teach receiving information defining a plurality of demand profiles at the cattle information server from the buyer interface, wherein at least one of the demand profiles specifies a first pre-conditioning program for a group of cattle, a pre-conditioning program comprising any of numerous protocols or criteria that govern the breeding, feeding, management, and health of cattle prior to slaughter, as required by Claim 1, for example. As discussed above, the claimed invention must be considered as a whole, prior to a determination of obviousness. Applicant respectfully submits that the method, as claimed in Claim 1, is not just a method applicable to buying and selling commodities, as suggested by the Examiner, but is intrinsically specialized to the buying and selling of cattle, based at least in part on the requirement of a pre-conditioning program being included in both the demand and supply profiles of Claim 1.

Applicant also respectfully submits not only that *Bi* and *Ordish* do not suggest or motivate a combination to teach the limitations of Claim 1, but that a combination of *Bi* and *Ordish* would not have a reasonable expectation of success, and thus are not properly

combinable. As discussed above, both the claimed invention and the references must be considered as a whole. Applicant respectfully submits that Examiner failed to consider *Ordish* as a whole, when providing that *Ordish* discloses an improved matching system for trading instruments including commodities futures contracts, and it was well known in the art at the time of the invention that cattle markets and the trading thereon represented a form of commodities futures contracts. (Office Action, page 3, para. 2). However, *Ordish* specifically teaches a system which receives an offer to sell (e.g., to sell one million of a given trading instrument at a given price), and the offer is transmitted as message 1 to central system and is thereafter anonymously *broadcast* as a message 2 to *all clients or keystations*. (*Ordish*, page 3, para. [0014]). A receiving client can then accept the offer or make a counter offer of less than the one million of the given trading instrument, and the system automatically creates an acceptance of the offer (see *Ordish*, page 3, para. [0014], providing that “If client B does not wish to buy the full one million of the given trading instrument but makes a counter offer as message 3 to buy one hundred thousand of the trading instrument at that price, the host computer sends a message 4 to client A (KS A) that *he has sold* one hundred thousand of the trading instrument to client B at the offered price and it sends message 6 to client B (KS B) that *he has bought* that amount.) Applicant notes that message 1 (the *offer* message), is NOT stored in a database or data storage unit of *Ordish*.

Thus, *Ordish* is not properly combinable with *Bi*, which teaches a matching process which involves an offer being input by a user, the offer being *stored* in an offer entity in the database. (*Bi*, Col. 3, lines 52-54). “When a requirement is received from a user, the search engine is executed to match the requirement with the existing offers, stored in the offer entities in the database of all the other users.” (*Bi*, Col. 3, lines 54-57). The matching results are then ranked according to a confidence and returned to the corresponding user. Thus, *Bi* does not teach, and functions contrarily, to the system of *Ordish*, which does not store an offer in a database, broadcasts the database to all users of the system, and allows a user to immediately accept the offer or create a *binding* counteroffer in response to the message. Therefore, Applicant respectfully submits that the *Bi* and *Ordish* references, when considered as a whole,

are not properly combinable, and would not meet a reasonable expectation of success when combined, as the combination would destroy the functions of each.

Claims 2-4 depend from Claim 1, and thus include all limitations of Claim 1. Thus, Claims 2-4 distinguish over the prior art for the reasons previously stated with respect to Claim 1. In addition, Examiner specifically notes with respect to Claim 3, for example, that “the references do not explicitly disclose the step of generating a bid associated with at least one of the plurality of demand profiles” which comprises “generating a bid price based at least in part on a non-fixed public index price”. Applicant respectfully submits that Examiner has failed to put forth objective teachings which would somehow make these references combinable to teach the limitations of Claim 3, when the references themselves *do not disclose* the limitations of Claim 3. Applicant respectfully submits that Examiner likewise stated that the references “do not explicitly disclose the step of receiving an acceptance of a bid from the producer interface” as required by Applicant’s Claim 4, and has failed to put forth objective teachings which would make these references combinable to teach the limitations of Claim 4, when the references themselves *do not disclose* the limitations of Claim 4.

Examiner did not provide a separate and clear rejection of Claim 5, but rather stated that the system claims of Claims 5-8 “would have been obvious from previously rejected method claims 1-4 respectively, and are therefore rejected using the same art and rationale.” Thus, Applicant respectfully submits that Examiner has not met the burden of showing a *prima facie* case of obviousness, by failing to show how the references, when combined, teach or suggest all of the limitations of Claims 5-8. However, based on Examiner’s language in rejecting Claim 1, Applicant submits that *Bi*, in view of *Ordish*, does not teach all of the claim limitations of Claims 5. Specifically, *Bi* in view of *Ordish*, does not teach a cattle information server which receives information from a buyer interface defining a plurality of demand profiles, wherein at least one of the demand profiles contains information specifying a first pre-conditioning program, a pre-conditioning program comprising any of numerous protocols or criteria that govern the breeding, feeding, management, and health of cattle prior to slaughter, as required by Claim 5. As discussed above, the claimed invention must be considered as a whole, prior to a determination

of obviousness. Applicant respectfully submits that the system for dynamically marketing cattle, as claimed in Claim 5, is not just a system applicable to buying and selling commodities, as suggested by the Examiner, but is intrinsically specialized to the buying and selling of cattle, based at least in part on the requirement of a pre-conditioning program being included in both the demand and supply profiles of Claim 5.

As discussed above with respect to Claim 1, Applicant respectfully submits that *Bi* and *Ordish* are not properly combinable when taken as a whole, in order to make a proper rejection of Claim 5.

Claims 6-8 depend from Claim 5, and thus include all limitations of Claim 5. Thus, Claims 6-8 distinguish over the prior art for the reasons previously stated with respect to Claim 5. Additionally, Examiner has not provided separate rejections for Claims 6-8 to which Applicant can respond.

In conclusion, because the Examiner has not met the burden of establishing the *prima facie* case of obviousness under § 103(a), Applicant respectfully requests that the rejection of Claims 1-8 be withdrawn.

2. Rejections of Claims 9-11

The Office Action rejected Claim 9-11 under 35 U.S.C. 103(a) as being unpatentable over *Bi* in view of *Ordish* in view of *Pratt*. Applicant respectfully submits that the burden of establishing the *prima facie* case of obviousness has not been met, and thus requests that the rejections of these claims be withdrawn.

Claim 9 has been amended to clarify the claimed invention, and is presented below for the Examiner's convenience:

9. (currently amended) In a beef cattle marketplace comprising a cattle information server and at least one interface, each of which is communicatively connected to a network, a method for tracking cattle production comprising:

receiving information defining a supply profile at the cattle information server from the interface, wherein the supply profile specifies a pre-conditioning program of an identified group of cattle, the pre-conditioning program

comprising any of numerous protocols or criteria that govern the breeding, feeding, management, and health of cattle prior to slaughter;

verifying, by a third party, the pre-conditioning program of the identified group of cattle;

storing the supply profile of the identified group of cattle in a database associated with the cattle information server;

receiving information defining carcass characteristics of the identified group of cattle at the time of harvest from the interface;

storing the carcass characteristics of the identified group of cattle in a database associated with the cattle information server; and

correlating the carcass characteristics of the identified group of cattle with the supply profile.

Applicant submits that the specification, at paragraphs [0031] and [0042], fully supports these amendments.

Applicant respectfully submits that *Bi*, in view of *Ordish*, in view of *Pratt*, does not teach all of the claim limitations of Claim 9. For example, these references, alone and when combined, do not teach a method comprising: receiving information defining a supply profile specifying a pre-conditioning program of an identified group of cattle, the pre-conditioning program comprising any of numerous protocols or criteria that govern the breeding, feeding, management, and health of a cattle prior to slaughter, and verifying by a third party the pre-conditioning program of the identified group of cattle.

Additionally, Applicant respectfully submits that *Bi* and *Ordish* do not suggest or motivate combining with *Pratt* to teach the limitations of Applicant's claimed invention. *Bi* and *Ordish* teach matching systems for trading instruments, which is not a limitation of the Claim 9 of the present invention. Also, they do not suggest any combination with the methods of *Pratt* to provide a method comprising, in part: receiving information defining a supply profile for an identified group of cattle, storing the supply profile in a database, receiving information defining carcass characteristics of the identified group of cattle at the time of harvest, storing the carcass characteristics, and correlating the carcass characteristics of the identified group of cattle with the supply profile. In teaching matching systems, *Bi* and *Ordish* do not teach defining a supply profile or defining *carcass characteristics*, and correlating the two. Thus, these references

cannot properly be combined with *Pratt*, in the manner suggested by the Examiner. Therefore, Applicant respectfully requests that the rejection of Claim 9 be withdrawn.

Additionally, the Office Action asserts that “[i]t would have been obvious to anyone skilled in the art at the time of invention to include the teaching of *Pratt* to the disclosure of *Bi* in view of *Ordish* so that the parties involved in the trading process can have a record of performance of previous cattle lots, as well as a way to track the current lot in order to control the quality of the product and ensure that previously agreed upon treatments are carried out as stipulated.” (Office Action, pages 5-6). This is the only motivation or suggestion provided in the Office Action for combining *Bi*, *Ordish*, and *Pratt*, to reject Claim 9. However, Applicant respectfully notes that these recited elements are not limitations of Claim 9. Thus, Applicant submits that Examiner misinterprets Claims 9-11 of the present invention, and requests that the rejections be withdrawn.

Claims 10-11 depend from Claim 9, and thus include all limitations of Claim 9. Thus, Claims 10-11 distinguish over the prior art for the reasons previously stated with respect to Claim 9. Additionally, the references, when combined, do not teach the feature of Claim 11, for example, of mining a database to determine patterns between a pre-conditioning program and at least one carcass characteristic. One of ordinary skill in the art would appreciate that mining a database to determine a pattern includes discovering previously unknown relationships among the data. (http://www.webopedia.com/TERM/d/data_mining.html). While *Pratt* provides for the “accumulation, recording and correlation of historical data, feedlot performance data, and carcass data” (*Pratt*, Col. 5, lines 46-49), it does not provide nor suggest modifying the present invention to mine a database to determine patterns between a pre-conditioning program and at least one carcass characteristic, but rather provides specific correlations which would be determined by the method of *Pratt*. (See *Pratt*, lines 55-62, providing correlating characteristics to determine “improved slaughter date and production costs projections”, “improved efficiency and value”, etc). Thus, *Pratt* does not provide a method for mining a database to determine additional patterns that might exist between a pre-conditioning program and at least one carcass characteristic.

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In conclusion, because the Examiner has not met the burden of establishing the *prima facie* case of obviousness under § 103(a), Applicant respectfully requests that the rejection of Claims 9-11 be withdrawn.

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III. Conclusion

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



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